

pain, abnormal heart sounds (pericardial friction rub), EKG abnormalities (e.g., ST segment and T wave changes), and/or increased fluid accumulation around the heart.

(ii) *Table requirements.* A Table injury for MP in a recipient or contact requires sufficient evidence in the medical records of the occurrence of acute MP. The acute MP (or related complications) must be of sufficient severity to require inpatient hospitalization. A death resulting from MP requires sufficient microscopic (histopathologic) evidence of MP or its sequela in heart tissue.

(c) *Glossary for purposes of this section.*

(1) *Blister or vesicle* means a circumscribed, elevated skin or mucous membrane lesion containing an accumulation of fluid.

(2) *Contact* means a person who developed a vaccinal lesion or infection through inoculation (and not vaccination).

(3) *Exposure period* means the span of time during which vaccinia virus can be transmitted from a vaccine recipient shedding vaccinia or through a contact case shedding vaccinia.

(4) *Inoculation* means transmission of and infection with the vaccinia virus through a means other than smallpox vaccination. Spread (inoculation) of vaccinia virus may occur in two ways: either self-inoculation in which the vaccinia virus is spread from the vaccinal lesion at the vaccination site to one or more areas on the same person or person-to-person inoculation when the vaccinia virus is spread to another person, a contact.

(5) *Inoculation site* means the skin or mucous membrane surface where the vaccinia virus entered the body through means other than vaccination.

(6) *Lesion* means a pathologic change.

(7) *Pustule* means a circumscribed, elevated skin or mucous membrane lesion containing an accumulation of white blood cells.

(8) *Recipient* means a person to whom the smallpox vaccine was administered.

(9) *Ulceration* means a specific skin or mucous membrane lesion characterized by erosion of the skin or mucous membrane surface.

(10) *Vaccination* means the administration and receipt of the smallpox (vaccinia) vaccine, and not through contact.

(11) *Vaccination site* means the skin surface where the vaccinia virus entered the body through vaccination.

§§ 102.22–102.29 [Reserved]

Subpart D—Available Benefits

SOURCE: 68 FR 70096, Dec. 16, 2003, unless otherwise noted.

§ 102.30 Benefits available to different categories of requesters under this program.

(a) *Benefits available to smallpox vaccine recipients and vaccinia contacts.* A requester who is an eligible smallpox vaccine recipient or vaccinia contact may be entitled to receive either medical benefits or benefits for lost employment income, or both.

(b) *Benefits available to survivors.* A requester who is an eligible survivor of a smallpox vaccine recipient or vaccinia contact may be entitled to receive a death benefit.

(c) *Benefits available to estates of deceased smallpox vaccine recipients or vaccinia contacts.* The estate of an otherwise eligible deceased smallpox vaccine recipient or vaccinia contact may be eligible to receive medical benefits or benefits for lost employment income, or both, if such benefits were accrued during the deceased person's lifetime as a result of a covered injury or its health complications, but were not paid while the deceased person was living. Such medical benefits and benefits for lost employment income may be available regardless of whether the death was the direct result of a covered injury or an unrelated factor. The estate of a deceased smallpox vaccine recipient or vaccinia contact may not receive a death benefit.

§ 102.31 Medical benefits.

(a) Smallpox vaccine recipients and vaccinia contacts may receive payments or reimbursements for medical services and items that the Secretary determines to be reasonable and necessary to diagnose or treat a covered injury or a health complication of a

covered injury (*i.e.*, sequela). The Secretary may pay for such medical services and items in an effort to cure, counteract, or minimize the effects of any covered injury, or any health complication of a covered injury, or to give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly benefits to a requester (e.g., a surgical procedure that lessens the amount of time and expense for the treatment of a covered injury). The Secretary may make such payments or reimbursements if the medical services and items have already been provided or if they are likely to be provided in the future. In making determinations about which medical services and items are reasonable and necessary, the Secretary may consider whether those medical services and items were prescribed or recommended by a health care practitioner.

(b) To receive medical benefits for the health complications of a covered injury, a requester must demonstrate that the complications are the direct result of the covered injury. Examples of health complications include, but are not limited to, complications of a covered injury that occur as part of the natural course of the underlying disease, an adverse reaction to a prescribed medication or diagnostic test used in connection with a covered injury, or a complication of a surgical procedure used to treat a covered injury.

(c) The calculation of medical benefits available under this Program is described in §102.80. Although there are no caps on medical benefits available under this Program, the Secretary may limit payments to the amount he deems reasonable for those services and items he considers reasonable and necessary. All payment or reimbursement for medical services and items is secondary to any obligation of any third-party payor to pay for or provide such services or items to the requester. As provided in §102.84, the Secretary retains the right to recover medical benefits paid to requesters by third-party payors.

(d) The Secretary may make payments or reimbursements of medical benefits to the estate of a deceased smallpox vaccine recipient or vaccinia

contact as long as such benefits were accrued during the deceased person's lifetime as the result of a covered injury or its health complications and were not paid during the deceased person's lifetime.

§ 102.32 Benefits for lost employment income.

(a) Requesters who are smallpox vaccine recipients or vaccinia contacts may be able to receive benefits for loss of employment income incurred as a result of a covered injury (or its health complications, as described in §102.31(b)). These benefits are a percentage of the employment income lost due to the covered injury or its health complications.

(b) The method and amount of benefits for lost employment income are described in §102.81. Benefits for lost employment income will be adjusted if there are fewer than 10 days of lost employment income. Benefits provided for lost employment income may also be adjusted for annual and lifetime caps. Payment of benefits for lost employment income is secondary to any obligation of any third-party payor to pay for lost employment income or to provide disability or retirement benefits to the requester. As provided in §102.84, the Secretary retains the right to recover benefits for lost employment income paid to requesters from third-party payors.

(c) The Secretary is not requiring an individual to use paid leave (e.g., sick leave or vacation leave) to be paid for lost work days. However, if an individual uses such paid leave in order to be paid for lost work days, the Secretary will not consider the days in which such leave was used to be days of lost employment income, unless the individual's employer restores the leave that was used. By restoring paid leave, an employer puts the individual in the same position as if he or she had not used paid leave on the lost work day (*i.e.*, takes back the payments made when the leave was taken and gives back the leave to the employee for future use).

(d) The Secretary may pay benefits for lost employment income to the estate of a deceased smallpox vaccine recipient or vaccinia contact as long as